IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

**J U D G M E N T**

(1) D.B.CRIMINAL APPEAL NO.644/2001
(Ghan Shyam Vs. State of Rajasthan)

(2) D.B.CRIMINAL APPEAL NO.992/2001
(Kalu Ram Vs. State of Rajasthan)

(3) D.B.CRIMINAL JAIL APPEAL NO.748/2001
(Kalu Ram & Anr. Vs. State of Rajasthan)

(4) D.B.CRIMINAL APPEAL NO.632/2001
(Hukam Singh @ Sagar Vs. State of Rajasthan)

D.B. Criminal Appeals under Section 374(2) Cr.P.C. against the judgment dt.17.8.2001 passed by the Additional Sessions Judge(Fast Track), Hanumangarh in Sessions Case No.50/2001(36/98).

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Date of Judgment: August 21, 2006

**P R E S E N T**

**HON'BLE MR.JUSTICE N.N.MATHUR**
**HON'BLE MR.JUSTICE R.P.VYAS**

Mr.H.S.S.Kharlia)
Mr.R.S.Gill )
Mr.Ravi Bhansali) for the respective appellants

Mr.O.P.Rathi, Public Prosecutor

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. These four criminal appeals filed by A/1 Ghan Shyam, A/2 Kalu Ram, A/3 Hukam Singh @ Sagar and A/4 Rajpal arises from the judgment of the learned Additional Sessions Judge(Fast Track), Hanumangarh dated 17.8.2001. While the appellants Ghan Shyam, Kalu Ram and Hukam Singh have been convicted of offence under Section 302/120-B I.P.C., the appellant Rajpal has been convicted of offence under Section 120-B I.P.C. All the four appellants have been sentenced to imprisonment for life and each of them to pay a fine Rs.100/-; in default of payment to further undergo 3 months' rigorous imprisonment.

2. Briefly stated the prosecution case is that on 21st January, 1998 at about 10.30 P.M., P.W.1 Ram Pratap lodged a written First Information Report at Police Station, Hanumangarh Junction stating inter alia that his deceased son Chhotu Shah was engaged as a Helper on 19.1.98 in place of Rajpal by the management of Rishabh Industries. The appellant Rajpal was not happy with this. Two days prior to the incident Rajpal along with other appellants namely Kalu, Ghan Shyam and

Hukam Singh @ Sagar visited his quarter and threatened him for taking his bread(employment). On the fateful day his son left the house at about 8 P.M. for Rishabh Factory. When he reached near the Ramji Ka Dhaba the appellants Kalu, Ghan Shyam and Hukam Singh @ Sagar came out from the hideous. One of them seeing Chhotu Shah uttered that he has to be finished being the enemy of Rajpal. Seeing them deceased Chhotu Shah with a view to escape ran towards Setiya Factory. However, the appellants chased him and caught hold near the labour quarters of Setiya Factory. He also rushed to rescue his son. Before he could reach and save, the appellants wounded Chhotu Shah causing injuries by knives. It was further stated that Kalu and Ghan Shyam were carrying knives in their hands. There was profused bleeding. His cries attracted P.W.3 Alaudin, P.W.4 Ramji and his another son P.W.2 Dhanilal. The injured Chhotu Shah was immediately removed to the hospital in an auto rickshaw. However, he succumbed to the injuries on the way. It was further averred that his son Chhotu Shah was murdered by Kalu and others as per the conspiracy planned by Rajpal. On this information police registered a case for offence under Sections 302 & 120-B I.P.C. and proceeded with

investigation. The police prepared inquest report and sent dead body for post-mortem. The appellants were arrested. After usual investigation police laid charge-sheet against the appellants for offence under Sections 302 & 120-B I.P.C.

3. The trial court framed charges against appellant Rajpal for offence under Section 120-B I.P.C. and against Ghan Shyam, Kalu and Hukam Singh for offence under Section 302 in alternate 302/120-B or 302/34 I.P.C. The appellants pleaded not guilty and claimed trial. The prosecution in order to establish its case adduced oral and documentary evidence. The appellants in their statement under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against them. The defence in support of its case examined D.W.1 Subhash Chandra, D.W.2 Trilok Singh and D.W.3 Amritpal Sharma. The trial court having found the prosecution case proved convicted and sentenced the appellants in the manner stated above.

4. We have heard learned counsel for the parties and carefully gone through the record. The prosecution case

rests on the testimony of the witnesses of the occurrence i.e. P.W.1 Ram Pratap, P.W.2 Dhani Ram, P.W.3 Alaudin, P.W.4 Ramji, P.W.13 Shreenarain and P.W.14 Rekha Ram. Before we proceed to deal with the evidence of the witnesses of the occurrence, we may state the medical evidence as it is not in dispute that deceased Chhotu Shah died of homicidal death.

5. P.W.16 Dr.Vinod Mavandiya stated that he conducted the autopsy on the dead body of deceased Chhotu Shah vide Ex.P57. He noticed the following injuries on his person:

> (1) Incised wound 1" x 1/4" muscle deep on the right knee medially.
>
> (2) Incised wound 1" x 1/4" x muscle deep on right leg anteriorly upper part.
>
> (3) Stab wound 1" x 1/2" x thoracic cavity deep in the back of the chest lower part. Two in number.
>
> (4) Stab wound 1" x 1/2" x muscle deep on the left side of the chest lower part.

In his opinion the cause of death was injury to right lung as a result of injury No.3 leading to shock and haemorrhage, which was sufficient in the ordinary course of nature to cause death.

6. P.W.1 Ram Pratap is the father of deceased Chhotu Shah. He stated that in the Oil Mill the appellant Rajpal was employed as a Helper. The owner of the Mill not being satisfied with his services removed him and employed his deceased son Chhotu Shah. This was the reason for Rajpal being unhappy. The appellant Rajpal, Kalu, Ghan Shyam and Hukam Singh had given a threat of life to his deceased son Chhotu Shah. After two days when his deceased son Chhotu was on way to the Mill and reached in front of the Ramji Ka Dhaba the appellants Kalu, Ghan Shyam and Hukam Singh came out of the hideous. They made utterance to the effect that the enemy of Rajpal may be finished. Kalu and Ghan Shyam were carrying knives in their hands. The appellant Hukam Singh caught hold of Chhotu Shah and two other appellants Kalu and Ghan Shyam gave knife blow causing stab injuries. His cries attracted P.W.2 Dhani Ram, P.W.3 Alaudin and P.W.4 Ramji. Seeing them the appellants escaped leaving Chhotu on the spot. Chhotu fell down. There was profused bleeding. He was immediately removed him to the hospital in a tempo. However, he succumbed to the injuries on the way. He was declared dead by the doctor in the hospital. Thereafter he lodged the First Information

Report at Police Station, Hanumangarh Junction. He has given the details of the investigation. There is a lengthy cross examination but nothing substantial has been elicited to discredit the testimony of this witness. The only criticism made against the statement of this witness is that there was no occasion for him to follow his son while he was on way to Mill for attending the duty. It is also submitted that the deceased was required to report for duty at 10 P.M. and he was to travel only a distance of 2 furlong, as such there was no reason to leave the house two hours earlier. The criticism levelled is not sustainable. It is evident that a threat was given by Rajpal, as such he could have followed his son for his safety. The testimony of this witness cannot be discarded on such flimsy grounds.

7. P.W.2 Dhani Ram is the brother of the deceased. He has stated that hearing the noise from the labour quarters he came out and witnessed that the appellants Ghan Shyam and Kalu were inflicting injuries to his brother Chhotu. He also stated that Hukam Singh had caught hold of him. He further stated that his father Ram Pratap, Alaudin, Ramji and 2-3 others had also arrived. Seeing them the appellants ran away. He also

stated that his brother Chhotu was engaged in place of Rajpal, which was the main reason of annoyance. Chhotu was immediately removed to the hospital in a tempo. He succumbed to the injuries on the way. He has also given the details of the investigation. Nothing substantial has been elicited in the cross examination to discredit the testimony of this witness. P.W.3 Alaudin has not supported the prosecution case as such he has been declared hostile.

8. P.W.4 Ramji stated that at about 4 P.M. When he reached near the Setiya Quarters he witnessed that Hukam Singh had caught hold of Chhotu and two other accused persons namely Kalu and Ghan Shyam were inflicting injuries. The criticism against this witness is that while the incident alleged to have taken place at about 8 P.M., according to him it took place at about 4 P.M. There appears to be some bonafide error in giving time, otherwise his statement is almost in line of P.W.1 Ram Pratap and P.W.2 Dhani Ram.

9. P.W.6 Vijay Singh is the tempo driver, who had taken the injured Chhotu to the hospital. P.W.7 Subhash Chandra and P.W.11 Ravi Kumar are the

photographers. P.W.8 Dinesh Kumar is owner of the Factory. He stated that deceased Chhotu Shah had worked in his Factory for two days. He had employed him in place of Rajpal. He produced Attendance Register Ex.P16 showing attendance of Chhotu Shah. P.W.9 Gopal Jha, P.W.10 Shyamlal and P.W.12 Onkar Nath are formal witnesses of the recoveries. P.W.15 Paramsukh was posted as A.S.I. at Police Station, Hanumangarh Junction at the relevant time. He has given the details of the investigation. P.W.17 Daya Shanker is the owner of Rishabh Industries. He stated that services of Rajpal were not satisfactory and as such he was removed. In his place deceased Chhotu Shah was engaged.

10. In pursuance of the information given by appellant Kalu vide Ex.P49 a bloodstained knife was recovered vide Ex.P50. The knife was seized and packed on the spot. As per the F.S.L. Report Ex.P57 it has been found to be stained with human blood.

11. As far as Rajpal is concerned he has been convicted on the charge of criminal conspiracy punishable under Section 120-B I.P.C. In order to prove the charge the prosecution has produced P.W.5

Ramanand. He stated that on 21st January, 1998 in the afternoon at about 3 P.M. He had seen Rajpal, Kalu, Sagar and Ghan Shyam in front of Ganga Rice Mill. He overheard talking them. Rajpal stated that Chhotu got him out from the job of the Factory and as such he should be killed. He promised to pay Rs.150/- for the job. In the cross examination he admitted that he did not disclose this fact to anybody.

12. We have considered the statement of P.W.5 Ramanand. Thus, the only evidence of conspiracy against appellant Rajpal is that of P.W.5 Ramanand. It is difficult to comprehend that the four persons will enter into a conspiracy of murder and plan the same standing on the road. Conspiracy is hatched in private or secrecy. The evidence produced is not sufficient to hold the appellant Rajpal guilty of offence under Section 120-B I.P.C. The trial court committed grave illegality in convicting the appellant of offence under Section 120-B I.P.C.

13. As regards Hukam Singh @ Sagar there is evidence of the witnesses of the occurrence that he facilitated the murder of deceased Chhotu. He caught hold Chhotu

and the other two accused Kalu and Ghan Shyam inflicted knife injuries. P.W.1 Ram Pratap has admitted in the cross examination that this part of statement that Hukam Singh caught hold Chhotu does not find place in his earlier statement Ex.P1. Thus, apparently there is an improvement in his statement. Similarly P.W.2 Dhani Ram has also admitted in the cross examination that he had not assigned role to Hukam Singh in his earlier statement Ex.D1 to the effect that he had caught hold deceased Chhotu. Thus, in view of the said improvement it clearly appears to be a case of over implication. Thus, the prosecution has failed to establish its case against appellant Hukam Singh @ Sagar beyond reasonable doubt. The trial court has committed error in convicting appellant Hukam Singh @ Sagar of offence under Section 302 with the aid of Section 34 I.P.C.

14. Thus, on consideration of the ocular evidence the prosecution has succeeded in establishing that it was the appellants Kalu and Ghan Shyam, who inflicted injuries to deceased Chhotu. As per the case set up by the prosecution the immediate cause of the incident was the displeasure of Rajpal. We have disbelieved the

prosecution case as against Rajpal of entering into conspiracy with the other accused appellants, thus, there is no evidence worth the name to impute any motive to the appellants Kalu and Ghan Shyam. It is of course true that there is creditable evidence to the effect that the appellants Ghan Shyam and Kalu inflicted injuries to deceased Chhotu. but as per the post-mortem report Ex.P57, the deceased sustained 4 injuries out of the 4 injuries, No.1,2 & 4 are simple in nature. The injury No.3 has been found to be fatal. From the evidence on record it is not possible say which fatal injury was caused by which accused. As it is not possible to hold who had caused the fatal injury to the deceased, we are of the view that appellants cannot be held guilty of the charge of murder under Section 302 I.P.C. At the most they can be held guilty of offence of causing grievous injuries by sharp edged weapons punishable under Section 326 with the aid of Section 34 I.P.C.

15. In view of the foregoing discussion all the four appeals are disposed of as follows:-

(1) D.B.Criminal Appeal No.644/2001- Ghan Shyam vs. State is partly allowed. The

conviction of the appellant under Section 302 with the aid of Section 120-B/34 I.P.C. is set aside. The appellant Ghan Shyam is acquitted of the said charge. He is convicted of offence under Section 326 with the aid of Section 34 I.P.C. The appellant Ghan Shyam is in Jail for more than six years. The sentence is reduced to the period already undergone. He shall be released forthwith, if not required in any other case.

(2) D.B.Criminal Jail Appeal No.748/2001- Kalu Ram & Anr. vs. State and D.B.Criminal Appeal No.992/2001 – Kalu Ram vs. State, the appeal filed by Kalu Ram is partly allowed. The conviction of the appellant under Section 302 with the aid of Section 120-B/34 I.P.C. is set aside. The appellant Kalu Ram is acquitted of the said charge. He is convicted of offence under Section 326 with the aid of Section 34 I.P.C. The appellant Kalu Ram is in Jail for more than six years. The sentence is reduced to the period already undergone. He shall be released forthwith, if not required in any other case.

As far as appeal filed by Rajpal along with Kalu Ram in D.B.Criminal Jail Appeal No.748/2001 is concerned, the same is partly allowed. The conviction of appellant Rajpal of offence under Section 120-B I.P.C. is set aside. He is acquitted of the charge under Section 120-B I.P.C. He is in Jail. He shall be released forthwith, if not required in any other case.

(3) D.B.Criminal Appeal No.632/2001 – Hukam Singh @ Sagar vs. State is allowed. The conviction of the appellant under Section 302 with the aid of Section 120-B/34 I.P.C. is set aside. The appellant Hukam Singh Singh @ Sagar is acquitted of the said charge. He is on bail. His bail bonds stand discharged.

**(R.P. VYAS), J.** **(N.N.MATHUR), J.**

BKS/-